

Rejection Under 35 U.S.C. § 102

Claims 1-7, 11, 13-16, 18, and 19 are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Heinzelmann et al., WO 95/33631. With respect to claims 1 and 14 (the two pending independent claims), the Examiner asserts that Heinzelmann shows all elements recited in the claims, including in particular a control system for controlling the first and second auxiliary brakes “and in which information on characteristics of the auxiliary brakes and at least one predefined limit value Vs for maximally permitted auxiliary braking torque are stored” (emphasis added). In an interview with Applicants’ representative Mr. Fagin, the Examiner sought to clarify her position. As summarized by the Examiner in the Interview Summary,

Mr. Fagin contacted the examiner to gain clarification as to her interpretation of the term “brake torque” as it pertained to the outstanding office action and the reading of the Heinzelmann reference. The examiner began by stating that from applicant’s specification, particularly page 3 of applicant’s spec., applicant states that one can control brake torque from a brake as a function of speed of the vehicle. With regards to the Heinzelmann reference, while not specifically stated in the reference, his utilization of speed as a determining factor for braking in essence also regulates brake torque in the vehicle. Heinzelmann discloses that the first and second auxiliary brakes 30 and 28 are controlled by using this vehicle speed/predefined limit value Vs. In light of all this, the examiner is interpreting the term “brake torque” in Heinzelmann to mean the overall braking force applied to either of the auxiliary brakes or the vehicle. As stated in the PCT abstract of Heinzelmann, these auxiliary devices are controlled (i.e., their braking torques/forces would be controlled) by using vehicle speed parameters. Thus, the Vs measurement would establish a limit value on the brake torque by regulating the operation of the auxiliary brakes so as not to exceed a certain speed for the vehicle. So in summary, while applicant may be defining the term term [sic] “brake torque” to mean one specific thing. The examiner is defining the term to be the force of braking present in the system and the rejection is tailored as such. The examiner recognizes that the gist of applicant’s invention is based on the regulation of torque capacity for the vehicle in the instance of auxiliary braking. However, the examiner maintains that defining the term “brake torque” to be “brake force” given the current claim language is a valid interpretation.

As Applicants’ representative understands it, the Examiner’s position is that “brake torque” is the same as brake force; brake force/torque can be used to regulate vehicle speed; Heinzelmann discloses a limit speed Vs, which can be maintained by adjusting brake force/torque; and therefore Heinzelmann discloses the claim-recited “predefined limit value for maximally permitted auxiliary brake torque” (or, in the Examiner’s words, “the Vs measurement

[in Heinzelmann] would establish a limit value on the brake torque by regulating the operation of the auxiliary brakes so as not to exceed a certain speed for the vehicle[]”). With that understanding of the Examiner’s logic in mind, Applicants refute it and traverse the rejection.¹

As Applicants’ representative explained to the Examiner in the interview, the present invention accounts for the “weakest link” in the system (in terms of braking-torque-carrying capacity of the various components); this is encompassed by recitation in the claims of predefined limit value for maximally permitted auxiliary brake torque, which predefined limit value is stored in the control system.

Heinzelmann, in contrast, has nothing to do with accommodating the weakest link in the braking system.² Rather, Heinzelmann discloses a cruise control system in which different components are controlled to maintain a velocity V_s that is registered upon shifting the vehicle to a “coasting condition.” (See the English language abstract of the reference.) Because the speed V_s is set when the vehicle switches to a coasting condition, and because the coasting condition can be entered at a myriad of different speeds, V_s is not a predefined value. Furthermore, setting – not predefining – the vehicle speed to some (variable) value V_s does not set brake force/torque, as the Examiner seems to contend. Rather, brake force/torque needed to maintain the vehicle’s speed at a given value will vary as a function of parameters such as vehicle weight; gradient on which the vehicle is traveling; headwind/tailwind; etc. Thus, contrary to the Examiner’s assertion, Heinzelmann does not disclose or concern itself with predefined limit values for

¹ If Applicants have misunderstood or mischaracterized the Examiner’s position, it is requested that the Examiner promptly contact Applicants’ representative by phone to clarify the matter in lieu of issuing yet another Office Action. In this regard, Applicants note that all claims in the application previously were allowed or indicated to be directed to allowable subject matter, only to be rejected upon a new Examiner taking over responsibility for the application (that renewed rejection being based on art that was already successfully distinguished over). Thus, prosecution of this application has been protracted long enough, and the courtesy of a phone call to expedite prosecution should be in order.

² Although it is not explicitly noted in the Interview Summary, the Examiner acknowledged that Heinzelmann operates in a different fashion altogether. As reflected by the last two or three sentences of the Interview Summary, however, the Examiner is relying on definitional contortions to get the claims to read on the Heinzelmann disclosure.

maximally permitted auxiliary brake torques and therefore does not anticipate the claimed invention. Accordingly, Applicants request that the rejection be withdrawn.

Rejection Under 35 U.S.C. § 103

Claims 8-10, 12, 17, and 20 are rejected under 35 U.S.C. § 103(a) based on Heinzelmann. Applicants traverse the rejection for at least the reasons set forth above with respect to the anticipation rejection and request that it be withdrawn.

The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437, referencing Attorney Docket No.: 7589.186.PCUS00.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner may directly contact the undersigned by phone to further the discussion.

Novak, Druce & Quigg, LLP
1000 Louisiana, Suite 5300
Houston, Texas 77002
(713) 571-3400
(713) 456-2836 (fax)
tracy.druce@novakdruce.com

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Tracy Druce", with a stylized, flowing script.

Tracy W. Druce, Esq.
Reg. No. 35,493